

**Before the  
Federal Communications Commission  
WASHINGTON, D.C. 20554**

In the matter of	)	
	)	
Indigo Wireless, Inc.	)	File No.: EB-10-SE-113
	)	
	)	NAL/Acct. No.: 201132100018
	)	
	)	FRN#: 0009120999

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: December 29, 2010**

**Released: December 30, 2010**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we propose a forfeiture of thirty-nine thousand dollars (\$39,000) against Indigo Wireless, Inc. (“Indigo Wireless”), a Global System for Mobile Communications-based (“GSM-based”) Tier III carrier<sup>1</sup> serving parts of New York and Pennsylvania. As detailed herein, we find that Indigo Wireless apparently willfully and repeatedly violated section 20.19(c)(3)(ii) of the Commission’s rules (“Rules”),<sup>2</sup> by failing to offer to consumers for nine months the required number or percentage of digital wireless handsets that met or exceeded the radio frequency interference standards for hearing aid compatibility set forth in section 20.19(b)(1)<sup>3</sup> of the Rules.

**II. BACKGROUND**

2. In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted several measures to enhance the ability of consumers with hearing loss to access digital wireless telecommunications.<sup>4</sup> The Commission established technical standards that digital wireless handsets must meet to be considered compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes.<sup>5</sup>

<sup>1</sup> Tier III carriers are non-Nationwide wireless radio service providers with 500,000 or fewer subscribers. *See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, 17 FCC Rcd 14841, 14847-48 ¶¶ 22-24 (2002).

<sup>2</sup> 47 C.F.R. § 20.19(c)(3)(ii).

<sup>3</sup> 47 C.F.R. § 20.19(b)(1).

<sup>4</sup> *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753 (2003); Erratum, 18 FCC Rcd 18047 (2003) (“*Hearing Aid Compatibility Order*”); Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005). The Commission adopted these requirements for digital wireless telephones under the authority of the Hearing Aid Compatibility Act of 1988, codified at section 710(b)(2)(C) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 610(b)(2)(C).

<sup>5</sup> *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777 ¶ 56; 47 C.F.R. § 20.19(b)(1), (2). The *Hearing Aid Compatibility Order* described the acoustic coupling and the inductive (telecoil) coupling modes as follows:

In acoustic coupling mode, the microphone picks up surrounding sounds, desired and undesired, and converts them into electrical signals. The electrical signals are amplified as needed and then (continued....)

Specifically, the Commission adopted a standard for radio frequency interference (the “M3” rating) to enable acoustic coupling between digital wireless phones and hearing aids operating in acoustic coupling mode, and a separate standard (the “T3” rating) to enable inductive coupling with hearing aids operating in telecoil mode.<sup>6</sup>

3. In the 2008 *Hearing Aid Compatibility First Report and Order*, the Commission established several deadlines between 2008 and 2011 by which manufacturers and service providers are required to offer specified numbers or percentages of digital wireless handset models.<sup>7</sup> The number or percentage of digital wireless handset models required by each deadline is based on several factors, including the applicable interference standard and air interface.<sup>8</sup> For example, between May 15, 2009 and May 14, 2010, non-Tier I service providers were required to ensure that at least nine handset models per digital air interface, or at least 50% of the models offered per digital air interface, met or exceeded the M3 rating,<sup>9</sup> and that at least five handset models per digital air interface, or at least one-third of the models

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converted back into electrical signals. In telecoil mode, with the microphone turned off, the telecoil picks up the audio signal-based magnetic field generated by the voice coil of a dynamic speaker in hearing aid-compatible telephones, audio loop systems, or powered neck loops. The hearing aid converts the magnetic field into electrical signals, amplifies them as needed, and converts them back into sound via the speaker. Using a telecoil avoids the feedback that often results from putting a hearing aid up against a telephone earpiece, can help prevent exposure to over amplification, and eliminates background noise, providing improved access to the telephone.

*Id.* at 16763 ¶ 22.

<sup>6</sup> As subsequently amended, section 20.19(b)(1) of the Rules provides that, for the period beginning June 6, 2008 and ending January 1, 2010, a wireless handset is deemed hearing aid-compatible for radio frequency interference if, at minimum, it meets the M3 rating associated with the technical standard set forth in either the standard document “American National Standard Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids,” ANSI C63.19-2006 (June 12, 2006) or ANSI 63.19-2007 (June 8, 2007). 47 C.F.R. § 20.19(b)(1). Section 20.19(b)(2) of the Rules provides that, for the period beginning June 6, 2008 and ending January 1, 2010, a wireless handset is deemed hearing aid-compatible for inductive coupling if, at minimum, it meets the T3 rating associated with the technical standard as set forth in either the standard document “American National Standard Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids,” ANSI C63.19-2006 (June 12, 2006) or ANSI 63.19-2007 (June 8, 2007). 47 C.F.R. § 20.19(b)(2).

<sup>7</sup> These requirements do not apply to service providers and manufacturers that meet the *de minimis* exception. See *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406, 3418-24 ¶¶ 34-46 (2008) (“*Hearing Aid Compatibility First Report and Order*”), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008); 47 C.F.R. §§ 20.19(c), (d). The *de minimis* exception provides that manufacturers or mobile service providers that offer two or fewer digital wireless handset models per air interface are exempt from the hearing aid compatibility requirements, and manufacturers or service providers that offer three digital wireless handset models per air interface must offer at least one compliant model. 47 C.F.R. § 20.19(e). We note that the Commission recently limited the *de minimis* exception to exclude service providers that are not small entities after an initial two-year period. See *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, Policy Statement and Second Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11167, 11180-89 ¶¶ 35-59 (2010).

<sup>8</sup> The term “air interface” refers to the technical protocol that ensures compatibility between mobile radio service equipment, such as handsets, and the service provider’s base stations. Currently, the leading air interfaces include Code Division Multiple Access (CDMA), Global System for Mobile Communications (GSM), Integrated Digital Enhanced Network (iDEN), and Wideband Code Division Multiple Access (WCDMA) a/k/a Universal Mobile Telecommunications System (UMTS).

<sup>9</sup> See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3419 ¶ 35; 47 C.F.R. § 20.19(c)(3)(ii).

offered per digital air interface, met or exceeded the T3 rating.<sup>10</sup> To ensure that the Commission can accurately monitor the availability of these handsets, and to provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets (including on the Internet), the FCC also requires annual reports from service providers and manufacturers on their efforts towards compliance.<sup>11</sup>

4. On January 15, 2010, Indigo Wireless submitted its hearing aid compatibility status report for the 2009 reporting period ("2009 Report").<sup>12</sup> A review of Indigo Wireless's 2009 Report reveals apparent inconsistencies between the hearing aid compatibility ratings for certain handsets listed in the Report and the ratings for those handsets specified in the Commission's equipment authorizations for those handsets.<sup>13</sup> Taking these inconsistencies into account, Indigo Wireless's 2009 Report indicates that it failed to offer to consumers the requisite number or percentage of digital hearing aid-compatible handsets that met or exceeded the M3 rating between March 1, 2009 and July 30, 2009 and between September 1, 2009 and December 31, 2009. Specifically, of the total number of handset models offered each month, only seven of the fifteen handset models (March 2009); seven of the sixteen handset models (April 2009); six of the fifteen handset models (May 2009); five of the thirteen handset models (June and July 2009); six of the thirteen handset models (August 2009); five of the twelve handset models (September 2009); four of the ten handset models (October and November 2009) and four of the eleven handset models (December 2009) met or exceeded the M3 rating.<sup>14</sup>

5. The Wireless Telecommunications Bureau subsequently referred Indigo Wireless's apparent violation of the hearing aid-compatible handset deployment requirements to the Enforcement Bureau ("Bureau") for possible enforcement action. On September 8, 2010, the Bureau issued a letter of inquiry ("LOI") to Indigo Wireless.<sup>15</sup> Indigo Wireless responded to the LOI ("LOI Response") on October 11, 2010.<sup>16</sup> In its LOI response, Indigo Wireless explained that it relied on information from Internet sources such as PhoneNews.com and PhoneScoop.com to confirm the rating for the Pantech c810

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<sup>10</sup> See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3419 ¶ 36; 47 C.F.R. § 20.19(d)(3)(ii).

<sup>11</sup> See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3443 ¶ 91; see also *Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Handset Manufacturers*, Public Notice, 19 FCC Rcd 4097 (Wireless Tel. Bur. 2004). In its 2008 *Hearing Aid Compatibility First Report and Order*, the Commission extended these reporting requirements with certain modifications on an open-ended basis, beginning January 15, 2009. See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3410 ¶ 13. In addition, the Commission made clear that these reporting requirements apply to manufacturers and service providers that fit within the *de minimis* exception. *Id.* at 3446 ¶ 99.

<sup>12</sup> Indigo Wireless's Hearing Aid Compatibility Status Report (filed January 15, 2010) ("2009 Report"), at [http://wireless.fcc.gov/hac\\_documents/100317/Indigo%20Wireless\\_189.PDF](http://wireless.fcc.gov/hac_documents/100317/Indigo%20Wireless_189.PDF).

<sup>13</sup> Indigo Wireless's 2009 Report indicated that the Pantech c810 handset (FCC ID JYCC810) is M4/T3 rated, the Sony Ericsson w910 handset (FCC ID PY7A3052021) is M3/T3 rated, and the Samsung s5230 (FCC ID A3LGTS5230) is M3 rated. *Id.* Commission records, however, show that these three handsets have not been rated for hearing aid compatibility.

<sup>14</sup> *Id.* Indigo Wireless's 2009 Report indicated that it offered the required number of M3-rated handsets during August 2009 and the required number of T3-rated handsets during the 2009 reporting period.

<sup>15</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to John C. Rigas, President, Indigo Wireless, Inc. (September 8, 2010) ("LOI").

<sup>16</sup> See e-mail from Laura Boyden, Operations Manager, Indigo Wireless, Inc. to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (October 11, 2010) ("LOI Response").

handset, the Sony Ericsson w920 handset and the Samsung s5230 handset because the third-party Internet sources were the “best information available to us at the time of filing.”<sup>17</sup> With respect to the Samsung s5230, Indigo Wireless explained that it sold the handset model for only one week in December 2009 and no longer promotes the handset as hearing aid-compatible.<sup>18</sup> Indigo Wireless further explains that “this handset may have been reported incorrectly however it was not willfully done so.”<sup>19</sup>

### III. DISCUSSION

#### A. Failure to Comply with Hearing Aid-Compatible Handset Deployment Requirements.

6. We find that Indigo Wireless failed to offer the required number of hearing aid-compatible handsets that met or exceeded the M3 rating for nine months during the 2009 reporting period. As noted above, the Commission has imposed varying benchmarks for the deployment of hearing aid-compatible handsets. As set forth in greater detail in the Appendix, between January 1, 2009 and May 14, 2009, Indigo Wireless was obligated to ensure that at least *eight* handset models or 50% of the handset models it offered met or exceeded the M3 rating.<sup>20</sup> Indigo Wireless failed to meet this standard, offering only seven M3-rated hearing aid-compatible handsets during March through the first half of May of 2009. In addition, during the latter part of the reporting period (between May 15, 2009 and December 2009), the handset deployment benchmarks for non-Tier I digital wireless service providers increased.<sup>21</sup> While Indigo Wireless was thus required to ensure that at least *nine* handset models or at least 50% of the handset models it offered met or exceeded the M3 rating during this period (that is, at least 50 percent of the 10 to 16 handsets offered during May through December 2009), the company again failed to offer the requisite number of hearing-aid compatible handsets, repeatedly falling short by one to two models.<sup>22</sup> Accordingly, we conclude that Indigo Wireless apparently willfully<sup>23</sup> and repeatedly<sup>24</sup> violated section

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<sup>17</sup> *Id.* at 1.

<sup>18</sup> *Id.* at 1-2.

<sup>19</sup> *Id.*

<sup>20</sup> See Appendix, Indigo Wireless Hearing-Aid Compatible Handset Offerings (M3-rated); *see also* (requiring non-Tier 1 digital wireless service providers to ensure that between September 7, 2009 and May 14, 2009, at least 50% of the handset models they offered, or at least *eight* handset models, met or exceeded the M3 rating for radio frequency interference). These requirements applied to each air interface for which service providers offered handsets to consumers. All of Indigo Wireless’s handsets for the 2009 reporting period operated only over the GSM air interface.

<sup>21</sup> 47 C.F.R. § 20.19(c)(3)(ii) (requiring non-Tier I digital wireless service providers to ensure that between May 15, 2009 and May 14, 2010, at least 50% of the handset models they offered, or at least *nine* handset models, met or exceeded the M3 rating for radio frequency interference).

<sup>22</sup> See Appendix (indicating that between May 15, 2009 and December 31, 2009, Indigo Wireless offered between 10 and 16 total handsets, of which only four-seven were hearing-aid compatible).

<sup>23</sup> Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 ¶ 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”); *see also Telrite Corporation*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7231, 7237 ¶ 12 (2008); *Regent USA*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 10520, 10523 ¶ 9 (2007); *San Jose Navigation, Inc.*, Forfeiture Order 22 FCC Rcd 1040, 1042 ¶ 9 (2007), *consent decree ordered*, Order and Consent Decree, 25 FCC Rcd 1494 (2010).

20.19(c)(3)(ii) of the Rules for nine months of the 12-month reporting period.

## B. Proposed Forfeiture

7. Under section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>25</sup> To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.<sup>26</sup> The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.<sup>27</sup> We conclude under this standard that Indigo Wireless is apparently liable for a forfeiture for its apparent willful and repeated violation of section 20.19(c)(3)(ii) of the Rules.

8. Section 503(b)(2)(B) of the Act authorizes a forfeiture assessment against a common carrier of up to \$150,000 for each violation, or for each day of a continuing violation, up to a maximum of \$1,500,000 for a single act or failure to act.<sup>28</sup> In exercising such authority, we are required to take into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>29</sup>

9. The Commission’s *Forfeiture Policy Statement*<sup>30</sup> and section 1.80 of the Rules do not establish a base forfeiture amount for violations of the hearing aid-compatible handset requirements set forth in section 20.19 of the Rules. The fact that the *Forfeiture Policy Statement* does not specify a base amount does not indicate that no forfeiture should be imposed. The *Forfeiture Policy Statement* states that “... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant.”<sup>31</sup> The Commission

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<sup>24</sup> Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to section 503(b) of the Act, provides that “[t]he term ‘repeated,’ ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2). See *Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001); *Southern California*, 6 FCC Rcd at 4388.

<sup>25</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

<sup>26</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>27</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

<sup>28</sup> 47 U.S.C. § 503(b)(2)(B). In 2008, the Commission amended section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), to increase the maximum forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. See *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845, 9847 (2008) (adjusting the maximum statutory amounts for common carriers from \$130,000/\$1,300,000 to \$150,000/\$1,500,000). The inflation adjustment, effective September 2, 2008, applies to violations that occur after that date; See 73 Fed. Reg. 44663-5.

<sup>29</sup> 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

<sup>30</sup> See *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

<sup>31</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17099.



retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in section 503 of the Act.<sup>32</sup>

10. In determining the appropriate forfeiture amount for violation of the hearing aid-compatible handset deployment requirements, we take into account that these requirements serve to ensure that consumers with hearing loss have access to digital wireless telecommunications services. In adopting the hearing aid compatibility rules, the Commission underscored the strong and immediate need for such access, stressing that individuals with hearing loss should not be denied the public safety and convenience benefits of digital wireless telephony.<sup>33</sup> Moreover, as the Commission has noted, the demand for hearing aid-compatible handsets is likely to increase with the growing reliance on wireless technology and with the increasing median age of our population.<sup>34</sup>

11. We have previously determined that violations of the hearing aid-compatible handset deployment requirements are serious in nature because failure to make compliant handsets available actually prevents hearing aid users from accessing digital wireless communications.<sup>35</sup> As such, we generally apply a base forfeiture amount of \$15,000 to reflect the gravity of these violations.<sup>36</sup> We have also applied the \$15,000 base forfeiture on a per handset basis (*i.e.*, for each handset model below the minimum number of hearing aid-compatible models required by the rules).<sup>37</sup>

12. The record establishes that Indigo Wireless failed to offer the required number of M3-rated handsets during March through July of 2009 and during September through December of 2009. During that period, Indigo Wireless failed to offer the minimum number of M3-rated handsets by up to two handsets. In imposing a forfeiture, we are unpersuaded by Indigo Wireless's claim that the inconsistency in the ratings for three of its handsets (the Pantech c810 handset, the Sony Ericsson w910 handset and the Samsung s5230 handset) was due to reliance on information from third-party websites,<sup>38</sup>

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<sup>32</sup> *Id.*

<sup>33</sup> *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16755 ¶ 4.

<sup>34</sup> *Id.* at 16756 ¶ 5 (noting that approximately one in ten Americans, 28 million, have some level of hearing loss, that the proportion increases with age, and that the number of those affected will likely grow as the median age increases). See also *Report on the Status of Implementation of the Commission's Hearing Aid Compatibility Requirements*, Report, 22 FCC Rcd 17709, 17719 ¶ 20 (2007) (noting, just four years later, that the number of individuals with hearing loss in the United States was "at an all time high of 31 million – with that number expected to reach approximately 40 million at the end of this decade").

<sup>35</sup> Compare, *e.g.*, *South Central Utah Telephone Association, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 19251, 19255-56 ¶ 10 (Enf. Bur., Spectrum Enf. Div. 2007), *response pending*; *Pine Telephone Company, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9205, 9210 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2007), *consent decree ordered*, Order and Consent Decree, 23 FCC Rcd 4485 (Enf. Bur. 2008).

<sup>36</sup> See, *e.g.*, *SLO Cellular, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 3990, 3996-97 ¶ 14 (Enf. Bur. 2008), *response pending*; *NEP Cellcorp, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 8, 13 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2009); *Corr Wireless Communications, LLC*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 11567, 11571 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2008), *response pending*; *Blanca Telephone Company*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9398, 9403 ¶ 12 (Enf. Bur., Spectrum Enf. Div. 2008), *response pending*; *Pinpoint Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9290, 9295 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2008); *Iowa Wireless Services, LLC d/b/a i Wireless*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 4735, 4739 ¶ 12 (Enf. Bur., Spectrum Enf. Div. 2008); *South Slope Cooperative Telephone Company d/b/a South Slope Wireless*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 4706, 4711-12 ¶ 12 (Enf. Bur., Spectrum Enf. Div. 2008), *response pending*.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 2.

it is well established that a violator's erroneous beliefs are not a mitigating factor warranting a forfeiture reduction.<sup>39</sup> We also note that hearing aid compatibility ratings information for wireless handsets is publicly available on the FCC's web site, simply by entering the FCC Identification number for the handset into the Office of Engineering and Technology's Equipment Authorization Database.<sup>40</sup> Accordingly, we find Indigo Wireless apparently liable for a forfeiture of \$30,000 for failing to offer to consumers the required number or percentage of hearing aid-compatible handset models in willful and repeated violation of section 20.19(c)(3)(ii) of the Rules.<sup>41</sup>

13. This base forfeiture amount is, however, subject to upward adjustment. We note, in this regard, that Indigo Wireless was out of compliance with the hearing aid-compatible handset deployment requirements for nine of the 12 months during the 2009 reporting period. In view of the extended duration of the violation,<sup>42</sup> we find that a significant upward adjustment of the base forfeiture amount

<sup>39</sup> See, e.g., *Profit Enterprises, Inc.*, Notice of Apparent Liability for Forfeiture, 8 FCC Rcd 2846, 2846 ¶ 5 (1993), *cancelled on other grounds*, 12 FCC Rcd 14999 (1997) (denying the mitigation claim of a manufacturer/distributor who thought that the equipment certification and marketing requirements were inapplicable, stating that its "prior knowledge or understanding of the law is unnecessary to a determination of whether a violation existed ... ignorance of the law is [not] a mitigating factor"); *Lakewood Broadcasting Service, Inc.*, Memorandum Opinion and Order, 37 FCC 2d 437, 438 ¶ 6 (1972) (denying a mitigation claim of a broadcast licensee who asserted an unfamiliarity with the station identification requirements, stating that licensees are expected "to know and conform their conduct to the requirements of our rules"); *Kenneth Paul Harris, Sr.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 12933, 12935 ¶ 7 (Enf. Bur. 2000), *forfeiture ordered*, 15 FCC Rcd 23991 (Enf. Bur. 2000), (denying a mitigation claim of a broadcast licensee, stating that its ignorance of the law did not excuse the unauthorized transfer of the station); *Maxwell Broadcasting Group, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 784, 784 ¶ 2 (MMB 1993), *recon. denied*, Memorandum Opinion and Order, 8 FCC Rcd 4322 (MMB 1993) (denying a mitigation claim of a noncommercial broadcast licensee, stating that the excuse of "inadverten[ce], due to inexperience and ignorance of the rules ... are not reasons to mitigate a forfeiture" for violation of the advertisement restrictions).

<sup>40</sup> See <https://fjallfoss.fcc.gov/oetcf/eas/reports/GenericSearch.cfm>. The hearing aid compatibility ratings information is included on the equipment certification for the handset.

<sup>41</sup> To the extent that Indigo Wireless argues that its failure to offer the required number of handsets was not willful, we reject this claim. See LOI Response at 1-2. As noted, section 312(f)(1) of the Act provides that "the term 'willful,' when used with reference to the commission or omission of any act, means the conscious or deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission." Indeed, it is well established that, in the context of forfeiture actions, "willful" does not require a finding that the rule violation was intentional or that the violator was aware that it was committing a rule violation. Rather, the term "willful" simply requires that the violator knew it was taking or failing to take the action in question, irrespective of any intent to violate the Commission's rules. See *Southern California*, 6 FCC Rcd at 4387-88 (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance" and applying the definitions of willful in section 312(f)(1) to forfeiture cases). See also *Abocom Systems, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 7448, 7451 (Enf. Bur. 2007) (rejecting Abocom's argument that it was only "inadvertently noncompliant" and that "its actions were not deliberate or intended to violate the rules"); *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649, 2651-52 (Enf. Bur., Spectrum Enf. Div. 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee's administrative error); *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (Enf. Bur., Spectrum Enf. Div. 2006) ("*Domtar Industries*") (same); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (Enf. Bur., Spectrum Enf. Div. 2006) (same).

<sup>42</sup> See 47 C.F.R. § 1.80(b)(4), Note to Paragraph (b)(4): *Section II. Adjustment Criteria for Section 503 Forfeitures* (establishing "repeated or continuous violation" as an upward adjustment factor).

from \$30,000 is warranted.<sup>43</sup> We therefore propose a \$39,000 forfeiture against Indigo Wireless for apparently willfully and repeatedly failing to comply with the hearing aid-compatible handset deployment requirements set forth in section 20.19(c)(3)(ii) of the Rules.

14. We therefore find Indigo Wireless is apparently liable for a total forfeiture of \$39,000 for apparently willfully and repeatedly failing to comply with the hearing aid-compatible handset deployment requirements set forth in section 20.19(c)(3)(ii) of the Rules.

#### IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, and sections 0.111, 0.311, and 1.80 of the Rules,<sup>44</sup> Indigo Wireless, Inc. **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of thirty-nine thousand dollars (\$39,000) for willful and repeated violation of section 20.19(c)(3)(ii) of the Rules.

16. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Indigo Wireless, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

17. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [arinquiries@fcc.gov](mailto:arinquiries@fcc.gov) with any questions regarding payment procedures. Indigo Wireless, Inc. will also send electronic notification on the date said payment is made to JoAnn Lucanik at [JoAnn.Lucanik@fcc.gov](mailto:JoAnn.Lucanik@fcc.gov) and to Pamera Hairston at [Pamera.Hairston@fcc.gov](mailto:Pamera.Hairston@fcc.gov).

18. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Account Number referenced in the caption. The statement must also be emailed to JoAnn Lucanik at [JoAnn.Lucanik@fcc.gov](mailto:JoAnn.Lucanik@fcc.gov) and to Pamera Hairston at [Pamera.Hairston@fcc.gov](mailto:Pamera.Hairston@fcc.gov).

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<sup>43</sup> While section 503(b)(6) of the Act bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of an NAL, we may consider the fact that Indigo Wireless’s misconduct occurred over an extended period to place “the violations in context, thus establishing the licensee’s degree of culpability and the continuing nature of the violations.” *Roadrunner Transportation Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72 (2000). The forfeiture amount we propose herein relates only to Indigo Wireless’s apparent violations that have occurred within the past year.

<sup>44</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, and 1.80.



19. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

20. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Indigo Wireless, Inc., 18 Beechnut Terrace, Ithaca, NY 14850.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau

**APPENDIX**  
**Indigo Wireless Hearing Aid-Compatible Handset Offerings (M3 rating)**

<b>Period</b>	<b>Total Handsets Offered</b>	<b>Hearing Aid-Compatible Handsets Offered (M3 rating)</b>	<b>Hearing Aid-Compatible Handsets Required (M3 rating)</b>	<b>Compliance?</b>
January 2009	7	6	<b>At least 50% or At least 8 of total number of handsets offered</b> (March 1, 2009 – May 14, 2009)	Yes
February 2009	11	7		Yes
March 2009	15	7		No
April 2009	16	7		No
May 1-14, 2009	16	7		No
May 15-31, 2009	16	7	<b>At least 50% or At least 9 of total number of handsets offered</b> (May 15, 2009 – December 31, 2009)	No
June 2009	14	6		No
July 2009	14	6		No
August 2009	14	7		Yes
September 2009	13	6		No
October 2009	11	5		No
November 2009	10	4		No
December 2009	11	4		No